

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DAVID WAYNE KETCHUM, JR.,

Plaintiff,

v.

Case Number 10-14749-BC
Honorable Thomas L. Ludington

RANDY KHAN, JOSEPH MCMILLAN,
JESSICA WELTON, JEFFREY WERDA,
and PHILLIP SCHUETTE,

Defendants.

**ORDER ADOPTING MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION,
GRANTING DEFENDANT SCHUETTE’S MOTION TO DISMISS, AND DISMISSING
PLAINTIFF’S CLAIMS AGAINST DEFENDANT SCHUETTE**

This matter is before the Court on a report and recommendation [Dkt. #19] issued by Magistrate Judge Paul J. Komives on July 26, 2011. Judge Komives recommends that the Court grant Defendant Phillip Schuette’s motion to dismiss Plaintiff’s complaint pursuant to either Federal Rule of Civil Procedure 12(b)(6) because Schuette was not a state actor during the incidents which underlie Plaintiff’s factual allegations in the complaint as required to properly plead a 42 U.S.C. § 1983 cause of action. Judge Komives recommends granting Schuette’s motion to dismiss pursuant to Rule 12(b)(6) and dismissing Plaintiff’s 42 U.S.C. § 1983 claims against Schuette. If the Court accepts this recommendation, the only remaining claims will be those related to defendants Khan, McMillan, Welton, and Werda, each of whom is a Michigan State Police Trooper.

Any party may serve and file written objections “[w]ithin fourteen days after being served with a copy” of the report and recommendations. 28 U.S.C. § 636(b)(1). Because service of the Court’s order was made by first class mail sent to Plaintiff’s address under Federal Rule of Civil Procedure 5(b)(2)(C), three days are added after the objection period would otherwise expire. As

of today's date, however, no party has filed any objections to the magistrate judge's report and recommendation. The failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

Accordingly, it is **ORDERED** that the Judge Komives's report and recommendation [Dkt. #19] is **ADOPTED**.

It is further **ORDERED** that Defendant Schuette's motion to dismiss [Dkt. #12] is **GRANTED**.

It is further **ORDERED** that Plaintiff's against Defendant Schuette are **DISMISSED WITH PREJUDICE**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: August 17, 2011

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on August 17, 2011.

s/Tracy A. Jacobs
TRACY A. JACOBS